



Energy and Telecommunications Interim Committee
62nd Montana Legislature

SENATE MEMBERS
ALAN OLSON--Chair
VERDELL JACKSON
JIM KEANE
CLIFF LARSEN

HOUSE MEMBERS
TONY BELCOURT--Vice Chair
ROBYN DRISCOLL
HARRY KLOCK
AUSTIN KNUDSEN

COMMITTEE STAFF
SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

EXHIBIT 8
DATE 3-25-13
HB 617

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

May 25, 2012

Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Re: Authority to Issue Certificates under Montana's Major Facility Siting Act

Dear Public Service Commissioners:

At the Energy and Telecommunications Interim Committee's May 17 meeting, members discussed the letter sent by the Public Service Commission (PSC) on May 7 regarding legislation transferring the determination of "need" in the Major Facility Siting Act from the Department of Environmental Quality (DEQ) to the PSC. The committee would like to thank you for inquiring with the ETIC on this very important topic before moving ahead with a legislative proposal.

The ETIC does not support shifting the determination of public interest, convenience, and necessity as required in 75-20-301, MCA, from the DEQ to the PSC. The committee does not feel it would be a worthwhile use of time for the PSC to explore such legislation.

The committee notes that DEQ's current rules, as outlined in ARM 17.20.1604 and 17.20.1606, outline a logical and thorough process for making a determination. This detailed rulemaking, along with the expertise on this subject within the DEQ, makes that agency the most qualified entity for making determinations. The PSC, in accordance with 75-20-216(6), is required to report to the DEQ "information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate." The PSC is encouraged to utilize this reporting requirement and, when necessary, become more involved in the DEQ process.

The ETIC thanks the PSC for its inquiry and respects the Commission's dedication to ensuring regulated public utilities provide adequate service at reasonable rates.

Respectfully,

Sen. Alan Olson
Chairman

C10425 2146slxa.



MONTANA PUBLIC SERVICE COMMISSION

1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
Telephone: 406-444-6199
FAX #: 406-444-7618
<http://psc.mt.gov>

Travis Kavulla, Chairman
Gail Gutsche, Vice-Chair
Bill Gallagher, Commissioner
Brad Molnar, Commissioner
John Vincent, Commissioner

May 7, 2012

Legislative Services Division
Energy and Telecommunications Interim Committee
P.O. Box 201706
Helena, MT 59620-1706

Re: Authority to Issue Certificates under Montana's Major Facility Siting Act

Members of the Energy and Telecommunications Interim Committee:

At the Montana Public Service Commission's May 1, 2012, meeting, Commissioner Bill Gallagher brought a work session in which he proposed to "Discuss whether the MT PSC should promote legislation or policy to the ETIC re: 1) shifting the determination of 'need' MCA §75-20-301(1)(a) that the facility will serve the public interest, convenience, and necessity 'PCN' MCA §75-20-301(1)(f) to the PSC from the DEQ; and 2) tying the power of eminent domain (MCA §75-20-113) to both the DEQ certificate and a PSC certification of PCN."

During the open meeting, the PSC agreed on a 3-2 vote (Commissioners Gallagher, Molnar, and Vincent voting aye; Commissioners Gutsche and Kavulla voting nay) to submit a letter inquiring to the ETIC whether the committee would be interested in having a bill drafted for its consideration on this topic.

Currently, under the Major Facility Siting Act (MFSA), the Department of Environmental Quality makes a determination of public convenience and necessity as well as on all aspects of transmission siting. This Commission's expertise in the area of transmission planning and the process followed by other western states may justify transferring the public need finding from the DEQ to the PSC.

A majority of states rely on their public utility commissions to make findings of public interest, convenience and necessity in the context of transmission siting. Certain others, such as Montana and Washington, do not.

In Montana, the DEQ "shall approve a facility" if it determines, among other things, "the basis of the need for the facility" and "that the facility will serve the public interest, convenience, and necessity." Mont. Code Ann. § 75-20-301 (2011). To determine whether a facility will serve the public interest, convenience, and necessity, the DEQ must consider the basis of the need for the facility, the nature of the probable environmental impact, the benefits to the applicant and the State, the effects of the economic activity, the effects on public health, welfare, and safety, and any other factors it considers relevant. *Id.*

In order to issue a certificate, the DEQ must specifically find that the value of the proposed facility exceeds "any other reasonable alternative" based on a determination of costs, benefits, need, cumulative environmental impacts, economic activity, and any other relevant factors. Admin. R. Mont. 17.20.1604 (2012). The DEQ may find "need" based on multiple considerations, including reliability and economy. *Id.* at 17.20.920.

As the agency that supervises and regulates the operations of public utilities and certain other regulated industries in Montana, the PSC is required to report "information relating to the impact of the proposed site on [its] area of expertise" to the DEQ. Mont. Code Ann. § 75-20-216(6). The PSC also "may include opinions as to the advisability of granting, denying or modifying a certificate," and the DEQ must reimburse the PSC "for the costs of compiling information and issuing the required report." *Id.*

The PSC has staff versed in transmission issues who regularly participate in regional forums dedicated to the issue of transmission planning, grid operations, and resource development, although because there has not been a PSC-jurisdictional transmission line built in Montana since the MFSA was passed, the PSC has not been heavily involved in the DEQ process.

As the supervisory body in the legislative interim over this agency, the PSC respectfully inquires whether the ETIC would find it worthwhile to explore legislation that would shift authority to issue certificates of public interest, convenience and necessity for transmission lines from the DEQ to the PSC. The PSC appreciates and respects whatever guidance you may have in this matter.

Respectfully,

THE MONTANA PUBLIC SERVICE COMMISSION